

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BRE'VELLE CROCKETT, ) CASE NO. CV 13-7785-AG-PJW  
                        )  
                        Plaintiff, ) ORDER DISMISSING ACTION FOR  
                        ) FAILURE TO PROSECUTE  
v.                       )  
                        )  
EVERETT C. COTTRELL, ET. AL., )  
                        )  
                        Defendants. )  
                        )  
                        )  
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In October 2013, Plaintiff, proceeding *pro se*, filed this civil rights action against Everett C. Cottrell, a Captain at FCI-Terminal Island Medical Center, and ten other prison officials there, alleging that they violated his constitutional rights when they falsified an incident report, locked him up in the SHU, refused to provide him with a disciplinary hearing so that he could challenge the charges, and retaliated against him when he exercised his constitutional right to speak out. He also alleged that the conditions in the SHU were cruel and unusual.

In April 2015, Defendants moved for partial summary judgment on four of Plaintiff's claims and for dismissal of the rest. Plaintiff did not oppose the motion. In October 2015, the magistrate judge

1 recommended partial summary judgment as to the four claims but  
2 concluded that Plaintiff should be allowed to proceed on his remaining  
3 claims. Plaintiff did not file objections to the Report and  
4 Recommendation and the Court adopted it.

5 Thereafter, the magistrate judge issued a scheduling order with  
6 discovery deadlines. On June 8, 2016, Defendants served Plaintiff  
7 with a notice of deposition, requests for production, and  
8 interrogatories. Plaintiff failed to appear for his deposition. He  
9 also failed to respond to the written discovery. On July 19, 2016,  
10 Defendants sent Plaintiff a letter asking him to respond to the  
11 discovery requests. Plaintiff did not respond.

12 On July 26, 2016, the Court ordered Plaintiff to provide his  
13 phone number, re-schedule his deposition, and respond to discovery.  
14 Plaintiff never responded. The Court then issued an order to show  
15 cause as to why the case should not be dismissed for failure to  
16 prosecute. Plaintiff was warned that failure to respond would result  
17 in his case being dismissed. Plaintiff did not appear for the hearing  
18 nor did he provide the Court with an explanation as to why he did not  
19 appear. In fact, since Plaintiff filed a change of address in October  
20 2014, he has not communicated with the Court.

21 The Court has authority to dismiss an action for failure to  
22 prosecute and for failure to comply with court orders. Fed. R. Civ.  
23 P. 41(b); *Link v. Wabash Railroad Co.*, 370 U.S. 626, 629-30 (1962)  
24 (explaining district court has authority to dismiss for lack of  
25 prosecution to prevent undue delay in disposing of pending cases and  
26 to avoid congestion in court's calendar); *Ferdik v. Bonzelet*, 963 F.2d  
27 1258, 1260 (9th Cir. 1992) (finding district courts have authority to  
28 dismiss actions for failure to comply with any order of the court).

1 In determining whether dismissal is appropriate, the Court considers  
2 five factors: (1) the public's interest in the expeditious resolution  
3 of litigation; (2) the court's need to manage its docket; (3) the risk  
4 of prejudice to defendants; (4) the public policy favoring disposition  
5 of cases on their merits; and (5) the availability of less drastic  
6 sanctions. *Ferdik*, 963 F.2d 1258 at 1260-61.

7 In this case, the first two factors--the public's interest in the  
8 expeditious resolution of litigation and the court's need to manage  
9 its docket--weigh heavily in favor of dismissal. Plaintiff's refusal  
10 to engage with the Court and Defendants' counsel has caused this case  
11 to linger on the docket for almost three years.

12 As for the third factor--prejudice to Defendants--they have spent  
13 considerable time and money defending against this lawsuit and will  
14 have to continue to do so until the case is resolved. They are unable  
15 to resolve the case, however, if Plaintiff will not cooperate in  
16 discovery. Further, as time goes by, the witnesses' memories of the  
17 events will likely begin to fade, which could prejudice Defendants at  
18 trial.

19 Although the fourth factor--the public policy in favor of  
20 deciding cases on the merits--ordinarily weighs against dismissal, it  
21 is Plaintiff's responsibility to move the case along and he has  
22 elected not to. *Morris v. Morgan Stanley*, 942 F.2d 648, 652 (9th Cir.  
23 1991).

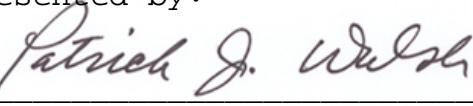
24 Finally, as to the fifth factor--availability of less drastic  
25 alternatives--the Court has considered the possibility of alternative  
26 sanctions but has been unable to craft an order that would convince  
27 Plaintiff to proceed with prosecuting this case. In fact, the Court  
28 has tried on several occasions to convince Plaintiff to participate by

1 threatening to dismiss the case if he did not cooperate but that has  
2 had no impact on him. *Ferdik*, 963 F.2d at 1262 (citing *Malone v. U.S.*  
3 *Postal Service*, 833 F.2d 128, 132-33 (9th Cir. 1987)) (explaining,  
4 warning a plaintiff that failure to obey a court order will result in  
5 dismissal of the case is enough to meet the "consideration of  
6 alternatives" requirement). Under these circumstances, dismissal for  
7 failure to prosecute is warranted. See *Link*, 370 U.S. at 629-30.

8 IT IS SO ORDERED.

9 DATED: August 31, 2016.



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11 ANDREW J. GUILFORD  
12 UNITED STATES DISTRICT JUDGE  
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16 Presented by:  
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18 PATRICK J. WALSH  
19 UNITED STATES MAGISTRATE JUDGE  
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